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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES RIVER INSURANCE)	Case No. CV 15-09972 DDP (JEMx)
COMPANY, an Ohio)	
Corporation,)	
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
)	TO REMAND
v.)	
)	
STARR INDEMNITY AND)	
LIABILITY COMPANY, a Texas)	
Corporation,)	
)	
Defendants.)	

Presently before the court are three separate motions in two related cases concerning the potential exhaustion of a commercial liability insurance policy.¹ Having considered the submissions of the parties, the court grants Plaintiff James River Insurance Company's Motion to Remand, vacates Defendant's Motion to Dismiss, and declines to exercise jurisdiction over the related case.

I. Background

Plaintiff James River Insurance Company ("James River") issued a commercial general liability policy to Golden State Water Company

¹ The related case is Starr Indemnity and Liability Co. v. James River Ins Co., CV-15-5781 DDP.

1 ("Golden State") with a \$1 million "property damage" limit.

2 Defendant Starr Indemnity and Liability Company ("Starr") issued a
3 \$10 million excess policy to Golden State.

4 In July 2014, one of Golden State's water mains ruptured in
5 Ojai, California. The rupture caused severe water damage to
6 several buildings, including the Ojai Playhouse ("the Theater").
7 James River, Golden State's primary insurer, determined that
8 liability was likely, and began paying claims to affected property
9 owners. James River ultimately disbursed \$1 million, the limit of
10 Golden State's primary property damage coverage. The bulk of those
11 payments, just under \$800,000, was made to the owners of the
12 Playhouse.

13 Subsequent communications between James River and Starr, the
14 excess carrier, revealed a dispute that underpins both this case
15 and the related case. Starr appears to contend that James River's
16 payments to the owner of the Theater did not exhaust James River's
17 \$1 million coverage limit because they did not secure a release of
18 claims from the owner of the Theater. According to Starr, because
19 such payments were not made in connection with "judgments or
20 settlements," they do not count toward James River's \$1 million
21 limit nor relieve James River of its duty to defend Golden State.²

22 Seeking this court's imprimatur for that position, Starr filed
23 the related action against James River, Starr Indemnity and
24 Liabilty Co. v. James River Ins Co., CV-15-5781 DDP CV 15-5781,
25

26 ² Although the policy states that James River will pay damages
27 resulting from "property damage," other language states that James
28 River's "duty to defend ends when we have used up the applicable
limit of insurance in the payment of judgments or settlements . . .
."

1 under the Declaratory Judgments Act on July 30, 2015. The amended
2 complaint in that case now also names Golden State as a defendant.
3 After the filing of Starr's suit, the owners of the Theater filed a
4 tort action against Golden State in Ventura County Superior Court,
5 Al Awar v. Golden State Water Co., No. 56-2015-00474589-CU-PO-VTA.
6 James River defended, and is currently defending, Golden State in
7 that suit, subject to a reservation of rights. After taking up
8 that defense, James River itself filed a declaratory judgment suit,
9 the instant action, against Starr on November 17, 2015, also in
10 Ventura County Superior Court. Starr subsequently removed to this
11 court on December 30, 2015. James River now seeks remand of this
12 case to state court, and argues that this court should abstain from
13 exercising jurisdiction over Starr's suit in favor of allowing the
14 state court to resolve the insurance coverage questions underlying
15 both related cases presently before this court.

16 **II. Discussion**

17 Although this court may exercise jurisdiction under the
18 Declaratory Judgments Act, the decision whether to do so is a
19 matter of discretion. Huth v. Hartford Ins. Co. of the Midwest,
20 298 F.3d 800, 802 (9th Cir. 2002); 28 U.S.C. § 2201-2202. Relevant
21 factors include, but are not limited to, avoiding needless
22 determination of state law issues, dissuading forum shopping, and
23 avoiding duplicative litigation. Id. at 803 (discussing Brillhart
24 v. Excess Ins. Co. Of Am., 316 U.S. 491 (1942)).

25 Of these factors, the issues raised here implicate questions
26 primarily of comity and judicial efficiency. James River contends
27 that these suits ask this court to rule upon matters of insurance
28 law that are purely state law questions, some of them matters of

1 first impression. James River further argues that this court's
2 exercise of jurisdiction would result in piecemeal litigation and
3 create the possibility of inconsistent judgments, as the underlying
4 Al Awar tort suit must remain in state court. Starr takes the
5 position that the cases before this court are totally unrelated to
6 the state court tort action, and that this court need only apply
7 well-settled state law.

8 The court is not persuaded that exercise of jurisdiction would
9 be appropriate under the circumstances here. Starr itself
10 acknowledges that it wants this court to rule whether James River
11 exhausted its \$1 million policy limit, and that resolution of that
12 question would require the court to determine whether James River's
13 payments to the Theater's owners were for "property damage" losses
14 as defined in the James River policy. It is unclear to the court
15 how that question is unrelated to the underlying Al Awar suit in
16 state court. Although the Al Awar suit raises causes of action for
17 negligence, trespass, nuisance, and inverse condemnation, any
18 damages inquiry in that suit will necessarily address questions of
19 property damage and the payments already made to the Theater's
20 owners by James River, including state law questions regarding
21 diminution in value, cost to rebuild, or other appropriate measures
22 of damages.³ Any attempt by this court to characterize James
23 River's payments would be, at best, duplicative of the state
24 court's efforts, even putting aside the risk of inconsistent
25 outcomes.

27 ³ James River also asserts that these cases and Al Awar will
28 require a court to determine whether required building code
upgrades to the historic Theater qualify as "property damage."

1 Nor is the court persuaded by Starr's argument that the legal
2 issues involved here are well-settled under state law. Although
3 Starr cites numerous state cases for the proposition that an
4 insurer's tender of policy limits does not relieve it of the duty
5 to defend, the relevance of that authority is not entirely clear to
6 the court. Here, James River does not appear to contend that it
7 has no duty to defend Golden State in the underlying suit, and
8 indeed, continues to defend its insured at the present time.
9 Furthermore, although Starr attempts to characterize this dispute
10 more narrowly, James River's suit, filed in state court, does not
11 seek declaratory relief limited to its duty to defend, but rather
12 to its duty to indemnify as well. Starr has not cited, nor is this
13 court aware of, any California authority for the proposition that
14 insurance payments made toward covered claims, absent a total
15 release of those covered claims, cannot serve to exhaust policy
16 limits. See Cal. Ins. Code § 11583. This court declines Starr's
17 invitation to take up these issues of state law.

18 The need to discourage forum shopping does not play a
19 significant role in this court's decision not to exercise
20 jurisdiction. James River attempts to paint Starr's filing in this
21 court as "reactive" because Starr filed shortly prior to a
22 scheduled mediation between the Theater's owners and Golden State.
23 James River does not appear to dispute, however, that it informed
24 Starr that it had no intention of pursuing a declaratory judgment.
25 It was therefore not unreasonable of Starr to pursue declaratory
26 relief itself. Although James River raises some questions about
27 Starr's good faith participation in the subsequent mediation, and
28 resultant knowledge that a non-removable state court action was

1 sure to follow, this court need not address those allegations in
2 detail in light of the weight of the other Brillhart factors
3 against the exercise of jurisdiction.

4 **III. Conclusion**

5 For the reasons stated above, the court concludes that
6 resolution of this action in this court would require the needless
7 determination of state law issues and would be duplicative of, and
8 possibly inconsistent with, state court proceedings. Accordingly,
9 Plaintiff's Motion to Remand is GRANTED. Defendant's Motion to
10 Dismiss is VACATED as moot.

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14 IT IS SO ORDERED.

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17 Dated: February 26, 2016



DEAN D. PREGERSON
United States District Judge